

# HOUSE BILL REPORT

## HB 1541

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**As Reported by House Committee On:**  
Transportation

**Title:** An act relating to transportation innovative partnerships.

**Brief Description:** Enacting the Transportation Innovative Partnerships Act.

**Sponsors:** Representatives Murray, Woods, Wallace, Jarrett, Ericksen, Morris, B. Sullivan, Chase, Schual-Berke, Rodne and Dickerson.

**Brief History:**

**Committee Activity:**

Transportation: 2/3/05, 3/5/05 [DPS].

**Brief Summary of Substitute Bill**

- Authorizes a new public-private partnership law for transportation projects.
- State governments are eligible to participate.
- Available for all modes of transportation.
- State transportation projects must be publicly financed.

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### HOUSE COMMITTEE ON TRANSPORTATION

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 25 members: Representatives Murray, Chair; Wallace, Vice Chair; Woods, Ranking Minority Member; Skinner, Assistant Ranking Minority Member; Appleton, Buck, Campbell, Curtis, Dickerson, Ericksen, Hankins, Hudgins, Jarrett, Kilmer, Lovick, Morris, Nixon, Rodne, Sells, Shabro, Simpson, B. Sullivan, Takko, Upthegrove and Wood.

**Staff:** Jeff Doyle (786-7322).

**Background:**

The current public-private initiatives law (RCW 47.46) does not provide for any additional projects. Out of six projects originally identified by the Department of Transportation for development, the only project that has been undertaken is the Tacoma Narrows Bridge project.

After a development agreement between the Department of Transportation and the private developer had been signed, the Legislature analyzed the cost savings that could result from state financing, and subsequently amended the law to provide for state financing.

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### **Summary of Substitute Bill:**

The Transportation Innovative Partnerships Act is created to enable the Washington State Department of Transportation (WSDOT) to enter into partnerships with private entities for the development of transportation facilities. Projects eligible for development include road and highway facilities, structures, operations, properties, vehicles, vessels, etc., representing any mode of travel (except for recreational purposes). Projects that are not transportation facilities, but that carry out public purposes or provide financing streams to a transportation project, are also eligible for development.

The Transportation Commission is directed to conduct a statewide tolling feasibility study to determine which state highways and facilities are viable candidates for development as a public-private partnership. The results of the study must be presented to the Legislature by January 15, 2006.

After conducting the feasibility study, the WSDOT may solicit proposals or may survey their existing transportation project lists and plans to determine if any are suitable for development as a public-private partnership. Beginning July 1, 2006, the WSDOT may also accept unsolicited proposals. If an unsolicited proposal is received, the WSDOT must publish notice of the proposal and provide 90 days to allow competing proposals to be submitted.

The WSDOT must enact rules for the proper acceptance, review, evaluation and selection of projects. Once a project has been identified for development, the WSDOT may enter into negotiations on an agreement. Some terms of the agreement are proscribed, such as the payment of prevailing wages on the public works, and provisions for bonding and the payment of workers and subcontractors. Other terms are required to be negotiated, such as ownership of the asset to be developed, maintenance responsibilities, liability for the project, etc.

Financing may be considered for all or part of a proposal, subject to certain conditions. For projects owned, leased, used or operated by the state as a public facility, any bonded indebtedness must be issued by the state treasurer. For other public projects that are not transportation projects, financing must be approved by the state finance committee or, in the case of federal tax exempt financing, by the public benefit corporation as specified in federal law. For projects that are not public projects or public facilities, any lawful source of financing may be used.

Sources of repayment may include user fees, tolls, fares, lease proceeds, gross or net receipts from sales, proceeds from development rights, franchise fees, or any other lawful form of consideration. Federal, state and local fund sources (such as grants, loans, or tax revenues) may also be used for project financing.

A public involvement plan must be submitted and approved as part of any agreement. All public meetings, workshops, open houses, hearings, etc., must be administered and attended by representatives of the public sector partner, and may not be contracted out to the private developer. For projects that cost in excess of \$300 million, a citizen advisory committee must be established for the purpose of reviewing, monitoring and advising on development of the project and operations and maintenance of the project after construction is complete.

After a tentative development agreement has been reached, the WSDOT must publish the proposed contract for 20 days, followed by a hearing to receive public comment. After receiving public comment and approving a public involvement plan, the WSDOT may execute the contract .

The Transportation Innovative Partnership Account (Account) is created in the state treasury, as a depository for bond proceeds and any revenues generated from the transportation project. Funds in the Account must be spent on the specific public-private project, and may not be diverted to other transportation projects.

The WSDOT is directed to study alternative contracting and project management authorities to seek out best practices as used by other states and the private sector. As part of the study, the WSDOT must consider procedures for negotiating contracts in situations of a single qualified bidder, in either solicited or unsolicited proposals. Finally, WSDOT must also analyze methods of encouraging competition in the development of transportation projects. A report must be submitted to the Governor and Legislature for consideration in the 2006 legislative session.

**Substitute Bill Compared to Original Bill:**

A statewide tolling feasibility must be conducted by January 2006 before any projects can be undertaken. Regional and local governments are no longer eligible participants; only the WSDOT may enter into agreements under this act. Non-transportation facilities may be co-developed along with transportation facilities. Although state financing is still required for state-owned, operated, leased or used projects, other types of tax-exempt financing may be used for public projects that are operated by other units of government. Unsolicited proposals may be accepted, but only beginning July 1, 2006. After receiving an unsolicited proposal, during the next 90 days, competing proposals may be submitted. Public oversight committees are required for projects \$300 million or greater, as opposed to \$50 million or greater in the original bill. The WSDOT is directed to study and make recommendations on alternative contracting processes and innovative project management techniques.

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**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date of Substitute Bill:** The bill takes effect 90 days after adjournment of session in which bill is passed.

**Testimony For:** Many other states are successfully developing projects under public-private partnership programs. This state's current law (47.46) has proved unworkable, and this legislation builds on the lessons learned in our prior experience. The ability to co-develop a transportation project with another public project, such as affordable housing, is truly innovative and could encourage true transit-oriented development.

Labor wants to be assured that the prevailing wage protections remain in place. Developers want assurances that their financial information is not improperly disclosed to competitors.

**Testimony Against:** None.

**Persons Testifying:** Doug MacDonald, Washington State Department of Transportation; Dick Page, Parsons Brinkerhoff; and Pamela Bailer-Campbell, Carter & Burgess.

**Persons Signed In To Testify But Not Testifying:** Terry Tilton, Washington State Building & Construction Trades Council.